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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,015

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Michael D. Kotzin

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EXAMINER

COULTER, KENNETH R

ART UNIT

PAPER NUMBER

2141

NOTIFICATION DATE

DELIVERY MODE

09/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/037,015	<b>Applicant(s)</b> KOTZIN, MICHAEL D.	
	<b>Examiner</b> Kenneth R. Coulter	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4 – 9, and 11 – 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al. (U.S. Pat. Pub. No. 2003/0066092) (Remote Task Scheduling for a Set Top Box).

4.1 Regarding claim 1, Wagner discloses a method for obtaining content for a wireless device (paragraphs 14, 15 “satellite”) comprising:

associating a code with at least both a desired server containing desired content and with control description data that defines at least when to start recording the desired content from the desired server (Abstract; Figs. 2, 3; paragraphs 15, 41 “the user can identify a **start time**, an end time, ...”);

storing in a code server, the code with associated control description data (Abstract; Figs. 2; paragraphs 15, 41); and

providing, by the code server, at least the stored control description data to the wireless device to facilitate acquisition of content (Abstract; Figs. 2, 3; paragraphs 15, 41);

from time to time, sending the code by the wireless device to the code server; and in response to receiving the code, the code server performs the step of providing the stored control description data to the wireless device (Abstract; Figs. 2, 3; paragraphs 15, 41; **paragraph 42**).

4.2 Per claim 2, Wagner teaches the method of claim 1 wherein the step of providing at least the stored control description data includes the step of performing, by the wireless device, time based retrieval of the desired content in response to record start time data included in the control description data (Abstract; Figs. 2, 3; paragraphs 15, 41).

4.3 Per claim 4, Wagner teaches the method of claim 1 wherein the step of storing the code with the associated control description data includes generating a server code database containing a plurality of codes each having associated control description data and publishing an online directory accessible by a plurality of subscriber wireless devices wherein the directory includes each of the plurality of codes and a description of what the code does (Abstract; Figs. 2, 3; paragraphs 15, 41).

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4.4 Regarding claim 5, Wagner discloses the method of claim 3 wherein the step of providing the code is done in response to an access request by the wireless device and transparent to a user of the wireless device, obtaining, by the wireless device the desired content using the control description data (Abstract; Figs. 2, 3; paragraphs 15, 41).

4.5 Per claim 6, Wagner teaches the method of claim 1 wherein the control description data includes at least one of: a destination identifier for a desired content source, a record start time for the content, a record stop time for the content, and transmission protocol required to retrieve the desired content from the desired content source (Abstract; Figs. 2, 3; paragraphs 15, 41).

4.6 Regarding claim 7, Wagner discloses the method of claim 1 including storing user call back data with associated codes for each of a plurality of users and initiating a call back in response to control description data associated with the code (Abstract; Figs. 2, 3; paragraphs 15, 41).

4.7 Per claims 8, 9, and 11 – 17, the rejection of claims 1, 2, and 4 – 7 under 35 USC 102(e) (paragraphs 4.1 – 4.6 above) applies fully.

### **Response to Arguments**

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3. Applicant's arguments filed 1/16/08 have been fully considered but they are not persuasive.

Applicant argues that Wagner not applicable in the present Application due to the 37 CFR 1.131 Declaration filed 10/22/07.

Examiner has carefully reviewed the Rule 131 Declaration. The evidence presented has not met the burden under 37 CFR 1.131. Invention of the subject matter of the rejected claims 1, 2, 4 – 9, and 11 – 17 of the present Application has been determined not to predate the effective filing date of the Wagner reference (October 1, 2001).

### **Conception**

Applicant has not met the burden with regard to conception.

**Very little evidence** was presented regarding conception.

### **Reduction to Practice**

Applicant has not met the burden with regard to the invention being reduced to practice.

Applicant has provided **no evidence** as to reduction to practice.

Examiner reminds Applicant of the specific passage in the MPEP (MPEP 2138.05) on reduction to practice.

Reduction to practice requires that the invention existed and worked for its initial purpose.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth R Coulter/  
Primary Examiner, Art Unit 2141

/KRC/